

AMENDED IN SENATE JUNE 23, 2008

AMENDED IN SENATE JUNE 12, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2850

Introduced by Assembly Member Villines

February 22, 2008

An act to amend Sections 62031, 62032, 62704, 62705, 62706, 62707.1, 62714, 62716, and 62717 of, and to add Sections 62033 and 62717.5 to, the Food and Agricultural Code, relating to milk.

LEGISLATIVE COUNSEL'S DIGEST

AB 2850, as amended, Villines. Market milk: stabilization and marketing plans: equalization pools: amendments: hearings.

Existing law generally requires the Secretary of Food and Agriculture to conduct a public hearing, as provided, prior to the formulation of a stabilization and marketing plan for market milk for any marketing area. The secretary is authorized to amend or terminate any stabilization and marketing plan, after notice and public hearing, as provided, if he or she makes a certain finding.

This bill would require the secretary, in deciding whether to amend the stabilization and marketing plan, to consider all relevant evidence and data submitted by any petitioner, interested party, or state agency in the hearing proceeding. The bill would require the secretary, in making this decision, to use only the relevant evidence and data submitted during the hearing and would require the decision to be supported by that relevant evidence and data submitted. This bill would also require the secretary, upon request, to make available all data and analyses to a party to the hearing for the party to use to evaluate the

proposed amendment, to develop an alternative proposal, or to prepare testimony, as specified. ~~This bill would specify the procedure for the publication of a tentative decision and a final decision within a certain time period after the hearing, as specified.~~

Existing law authorizes the secretary to develop a proposed milk pooling plan and to designate the proposed areas in which the plan will be made effective and requires the secretary to hold public hearings, as provided, after the secretary has formulated the proposed plan. The secretary is authorized to amend the pooling plan after notice and public hearing, as provided, if the secretary makes a certain finding.

This bill would require the secretary, in deciding whether to amend the milk pooling plan, to consider all relevant evidence and data submitted by any petitioner, interested party, or state agency in the hearing proceeding. The bill would require the secretary, in making this decision, to use only the relevant evidence and data submitted during the hearing and would require the decision to be supported by that relevant evidence and data submitted. This bill would also require the secretary, upon request, to make available all data and analyses to a party to the hearing for the party to use to evaluate the proposed amendment, to develop an alternative proposal, or to prepare testimony, as specified. ~~This bill would specify the procedure for the publication of a tentative decision and a final decision within a certain time period after the hearing, as specified.~~

This bill would also make various technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 62031 of the Food and Agricultural Code
2 is amended to read:
3 62031. The secretary may amend or terminate any stabilization
4 and marketing plan, after notice and public hearing as prescribed
5 in Article 7 (commencing with Section 61991), if he or she finds
6 that the plan is no longer in conformity with the standards which
7 are prescribed in, or will not tend to effectuate the purposes of,
8 this chapter. Any order under this article amending or terminating
9 any stabilization and marketing plan shall be subject to Section
10 61996.

1 SEC. 2. Section 62032 of the Food and Agricultural Code is
2 amended to read:

3 62032. A hearing on the amendment or termination of a
4 stabilization and marketing plan may be held upon the motion of
5 the secretary and shall be held upon receipt of a petition that is
6 signed by producers, or by the board of directors of any nonprofit
7 agricultural cooperative marketing association which is authorized
8 by its members to so petition. The petition shall represent not less
9 than 55 percent of the total number of all producers and not less
10 than 55 percent of the total production of all producers that are
11 eligible to petition the secretary for the formulation of such a plan.

12 SEC. 3. Section 62033 is added to the Food and Agricultural
13 Code, to read:

14 62033. (a) Additional procedures that govern the process of
15 a hearing noticed under this article and Article 7 (commencing
16 with Section 61991) are found in Article 1 (commencing with
17 Section 2080.2) of Subchapter 3 of Chapter 3 of Division 3 of Title
18 3 of the California Code of Regulations.

19 (b) In deciding whether to amend the stabilization and marketing
20 plan, the secretary shall consider all relevant evidence and data
21 submitted by any petitioner to the hearing proceeding, all relevant
22 evidence and data submitted by any interested person to the hearing
23 proceeding, or by any agency of the state in addition to the
24 department as submitted during the hearing proceeding.

25 (c) In making a decision concerning an amendment to the
26 stabilization and marketing plan, the secretary shall use only that
27 relevant evidence and data submitted during the hearing process
28 and the decision shall be supported by the relevant evidence and
29 data submitted.

30 (d) (1) (A) The secretary shall, at the written request of any
31 interested party, provide and make available data, analyses in order
32 to permit the requesting party to evaluate any proposal for
33 amendment of or change to a stabilization and marketing plan, to
34 develop alternative proposals and to prepare testimony and other
35 evidence at the hearing. A request shall not be denied by the
36 secretary on either of the following grounds:

37 (i) Providing the requested data or analyses may require a
38 compilation or extraction of data; however, purely proprietary
39 information need not be provided or disclosed.

40 (ii) The secretary considers the request to be irrelevant.

1 (B) The secretary shall not develop, present, or introduce false
2 or misleading financial or other material or information, or financial
3 information that violates generally accepted accounting practices
4 and principles.

5 ~~(2) Within 52 days of the expiration of the period established~~
6 ~~for the filing of posthearing briefs, the secretary shall issue, publish,~~
7 ~~and provide copies of a written tentative decision on the matters~~
8 ~~embraced in the hearing to all parties who participated in the~~
9 ~~hearing. Any party that participated in the hearing may, no later~~
10 ~~than seven days after publication of the tentative decision, file with~~
11 ~~the hearing officer comments or objections to the tentative decision,~~
12 ~~which shall be considered by the secretary before rendering a final~~
13 ~~decision. The secretary shall issue and publish a final decision~~
14 ~~within 62 days after the expiration of the period for filing~~
15 ~~posthearing briefs.~~

16 (3)

17 (2) The secretary is directed to meet and consult with
18 representative producers, consumers, and other interested parties
19 to develop further standard procedures and principles to govern
20 the hearings to ensure that all relevant data and evidence is made
21 available to all parties participating in the hearing and that the
22 procedural due process rights of all parties are protected.

23 SEC. 4. Section 62704 of the Food and Agricultural Code is
24 amended to read:

25 62704. The secretary is authorized to develop a proposed
26 pooling plan and to designate the proposed areas in which the plan
27 will be made effective. The secretary shall appoint fluid milk
28 producers, and representatives of producers, to be the members
29 and alternate members of a formulation committee, reasonably
30 representative of all producers and areas to be included in the
31 proposed pooling plan, which committee shall advise and assist
32 the secretary in the establishment of the proposed pooling plan
33 area and in the formulation of the proposed pooling plan. The
34 pooling plan shall include all areas covered by stabilization and
35 marketing plans under Chapter 2 (commencing with Section
36 61801), except any relatively isolated region of the state may be
37 excluded therefrom, if the secretary, after a public hearing, finds
38 that the inclusion of the region is not practical or in conformity
39 with the purposes of the pooling plan, or if he or she finds that the

1 producers in the relatively isolated region do not desire to be a part
2 of either their own or one of the pools.

3 SEC. 5. Section 62705 of the Food and Agricultural Code is
4 amended to read:

5 62705. After the secretary, with the advice and assistance of
6 the formulation committee, has formulated the proposed plan, he
7 or she shall hold one or more public hearings in each proposed
8 pooling area to be affected by the proposed plan for the purposes
9 of considering modification of the proposed boundaries and
10 formulating the pooling plan which will best accomplish the
11 purposes of this chapter. Notice of the public hearings shall be
12 given to each producer, including each member of cooperative
13 marketing associations, who ships fluid milk to a distributor and
14 to each distributor who receives fluid milk from producers. The
15 procedures for the giving of notice and the conducting of the
16 hearings shall be the same as those provided in Chapter 2
17 (commencing with Section 61801) for public hearings on
18 stabilization and marketing plans.

19 SEC. 6. Section 62706 of the Food and Agricultural Code is
20 amended to read:

21 62706. The pooling plan shall prescribe the pooling area to be
22 covered by each pool. Any such pooling area shall mean and
23 include a large sales and consuming center together with all
24 intermediate and secondary cities, towns, and rural areas, which
25 depend upon and receive their fluid milk supplies from a common
26 producing and supply area, and including the fluid milk producers
27 who produce fluid milk for such sales and consuming area, and
28 including the fluid milk processing plants which receive, process,
29 or distribute the fluid milk supplies for such an area.

30 In establishing pool areas, the secretary shall take into
31 consideration the fact that some producers and processors may
32 produce, or process and distribute, respectively, fluid milk for
33 more than one pool area and therefore may qualify for inclusion
34 and participation in more than one pool. Producers who so qualify
35 for participation in more than one pool shall be permitted to do so
36 on the basis of the proportions of their shipments of fluid milk to
37 each pool area.

38 SEC. 7. Section 62707.1 of the Food and Agricultural Code is
39 amended to read:

1 62707.1. (a) The secretary, on July 1, 1978, shall issue new
2 pool quota sufficient to bring all holders of production base and
3 pool quota as of that date (excluding any production base and pool
4 quota issued pursuant to subdivision (f) of Section 62707), to the
5 equalization point both on the fat and the solids-not-fat
6 components.

7 (b) Subsequent to July 1, 1978, all allocations of new class 1
8 usage determined under subdivision (e) of Section 62707, shall be
9 made as follows:

10 (1) Forty percent to producers whose total production base and
11 pool quota are below the equalization point, to be allocated
12 according to provisions adopted by the secretary in the applicable
13 pooling plan.

14 (2) Forty percent to producers whose total production base and
15 pool quota are equal to or above the equalization point, this
16 allocation to each such producer to be in the same ratio to the total
17 allocation under this subdivision as that producer's total holdings
18 of quota bears to the total quota holdings of all equalized producers.

19 (3) The remaining 20 percent shall be utilized for new producer
20 allocations under subdivision (f) of Section 62707, according to
21 the provisions in the then applicable pooling plan.

22 The terms "total production and pool quota" and "total quota"
23 shall, for the purposes of this subdivision, include allocations of
24 production base and pool quota issued pursuant to subdivision (f)
25 of Section 62707.

26 SEC. 8. Section 62714 of the Food and Agricultural Code is
27 amended to read:

28 62714. After the secretary has established pools, each
29 distributor shall report to the secretary the total receipts from the
30 producers that are shipping to the distributor and the class 1, class
31 2, class 3, class 4a, and class 4b usage of the distributor and any
32 other information determined by the secretary as necessary to carry
33 out the operation of the pool.

34 The secretary shall have access to, and may enter during business
35 hours, the premises of any distributor, handler, or producer, or any
36 place where the books, papers, records, or documents pertaining
37 to any transaction which relates to the acquisition or disposition
38 of milk are kept. The secretary may inspect and copy these books,
39 papers, records, or documents in any place within the state.

1 SEC. 9. Section 62716 of the Food and Agricultural Code is
2 amended to read:

3 62716. Following the required hearing, the secretary shall
4 submit the pooling plan to producers concerned for their approval
5 or disapproval in a statewide referendum.

6 The approval or disapproval of individual producers voting in
7 this referendum shall be kept confidential.

8 Each producer shall have one vote and such vote shall be
9 individually cast so that there will be no block voting. The secretary
10 shall prepare a ballot. The ballot form shall be substantially as
11 follows:

12 Ballot

13
14 Shall the proposed pooling plan be made effective?

15
16 Yes ____ No ____
17

18 In addition, the ballot shall include a statement of the voter's
19 total production during the calendar month next preceding the
20 month of the commencement of the referendum period, where and
21 to whom such production was sold or otherwise disposed, and the
22 producer's name and address.

23 The secretary may reveal the names of producers whose votes
24 have been received to both proponents and opponents of the plan.

25 The referendum shall be set for a period of 60 days. The secretary
26 may at his or her own discretion or upon a proper showing, extend
27 the referendum for a period not to exceed 30 days.

28 SEC. 10. Section 62717 of the Food and Agricultural Code is
29 amended to read:

30 62717. If the secretary finds that producers on a statewide basis
31 have assented in writing to the proposed pooling plan submitted
32 to them for assent, the secretary shall place the proposed pooling
33 plan into effect. The secretary shall find that producers have
34 assented to the plan if he or she finds on a statewide basis that not
35 less than 51 percent of the total number of eligible producers in
36 the state shall have voted in the referendum and finds one of the
37 following:

38 (a) Sixty-five percent or more of the total number of eligible
39 producers who voted in the referendum who produced 51 percent
40 or more of the total amount of fluid milk produced in the state

1 during the calendar month next preceding the month of the
2 commencement of the referendum period by all producers who
3 voted in the referendum approve the plan.

4 (b) Fifty-one percent or more of the total number of eligible
5 producers who voted in the referendum who produced 65 percent
6 or more of the total amount of fluid milk produced in the state
7 during the calendar month next preceding the month of the
8 commencement of the referendum period by all producers who
9 voted in the referendum approve the plan.

10 If the plan is not approved, the secretary may resubmit the plan,
11 or submit a new plan, at any time after six months from the date
12 the secretary announces the plan was not approved.

13 The secretary may amend the plan, after notice and public
14 hearing has been given in the same manner as is provided in
15 Chapter 2 (commencing with Section 61801) for stabilization and
16 marketing plans, if he or she finds that the amendment is necessary
17 to effectuate the purposes of this chapter. After the hearing, the
18 secretary, upon his or her own motion, may make nonsubstantive
19 amendments to the plan. The secretary may make substantive
20 amendments to the plan only if producers assent to the proposed
21 amendments at a referendum conducted in the same manner and
22 in the same number as provided for the referendum approving the
23 pooling plan.

24 The secretary may terminate the plan on a statewide basis after
25 notice and public hearing has been given in the same manner as
26 is provided in Chapter 2 (commencing with Section 61801) for
27 stabilization and marketing plans, if he or she finds that the plan
28 is no longer in conformity with the standards described in, or will
29 not tend to effectuate the purposes of, this chapter. The hearing
30 may be held upon the motion of the secretary, and shall be held
31 upon receipt of a petition signed by producers representing not
32 less than 25 percent of the total number of all producers and not
33 less than 25 percent of the total production of all producers.

34 The secretary shall submit the termination of the plan on a
35 statewide basis in a referendum conducted in the same manner as
36 provided for initial approval of the plan if, after notice and public
37 hearing has been given in the same manner as is provided in
38 Chapter 2 (commencing with Section 61801) for stabilization and
39 marketing plans, he or she finds that a substantial question exists
40 as to whether or not producers desire the plan to continue and shall

1 submit the plan for termination upon receipt of a petition requesting
2 termination signed by producers representing not less than 25
3 percent of the total number of all producers and not less than 25
4 percent of the total production of all producers. The plan shall be
5 terminated if termination is favored by the same percentage of
6 producers producing the same amount of fluid milk as required to
7 initiate the plan.

8 SEC. 11. Section 62717.5 is added to the Food and Agricultural
9 Code, to read:

10 62717.5. (a) Additional procedures that govern the process of
11 a hearing noticed under Sections 62705 and 62717 are found in
12 Article 1 (commencing with Section 2080.2) of Subchapter 3 of
13 Chapter 3 of Division 3 of Title 3 of the California Code of
14 Regulations.

15 (b) In deciding whether to amend the milk pooling plan, the
16 secretary shall consider all relevant evidence and data submitted
17 by any petitioner to the hearing proceeding, all relevant evidence
18 and data submitted by any interested person to the hearing
19 proceeding, or by any agency of the state in addition to the
20 department as submitted during the hearing proceeding.

21 (c) In making a decision concerning an amendment to the milk
22 pooling plan, the secretary shall use only that relevant evidence
23 and data submitted during the hearing process and the decision
24 shall be supported by the relevant evidence and data submitted.

25 (d) (1) (A) The secretary shall, at the written request of any
26 interested party, provide and make available data, analyses, or both
27 in order to permit the requesting party to evaluate any proposal
28 for amendment to a milk pooling plan, to develop alternative
29 proposals and to prepare testimony and other evidence at the
30 hearing. A request shall not be denied by the secretary on either
31 of the following grounds:

32 (i) Providing the requested data or analyses may require a
33 compilation or extraction of data; however, purely proprietary
34 information need not be provided or disclosed.

35 (ii) The secretary considers the request to be irrelevant.

36 (B) The secretary shall not develop, present, or introduce false
37 or misleading financial or other material or information, or financial
38 information that violates generally accepted accounting practices
39 and principles.

1 ~~(2) Within 52 days of the expiration of the period established~~
2 ~~for the filing of posthearing briefs, the secretary shall issue, publish,~~
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17 available to all parties participating in the hearing and that the
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